



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 16 मार्च, 2011/25 फाल्गुन, 1932

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

AWARDS

BEFORE SHRI D.S KHENAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Reference no 20 of 2005.

Instituted on. 18.2.2005.

Decided on. 21.12.2010.

Balwan Singh S/o Shri Jeet Ram R/o Village Dhollar, P.O Mandhala, Tehsil Kasauli,
District solan, HP. . .Petitioner.

Vs.

The Executive Engineer, HPSEB (Electrical) Division Parwanoo, District Solan, HP.

. Respondent.

For petitioner: Shri Rakesh Manta, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Balwan Singh S/o Shri Jeet Ram, ex-daily wages beldar by the Executive Engineer, H.P.S.E.B. (E) Division Parwanoo, District Solan, H.P. w.e.f. 20.2.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation Shri Balwan Singh is entitled to?”

2. Brief facts of the case are that petitioner Balwan Singh was engaged as beldar in the month of March, 1982 by Himachal Pradesh State Electricity Board (in short Electricity Board). He worked at Barotiwala Sub Division of Electricity Board. He had also worked at Barotiwala and Baddi in operation section of Electricity Board. His services were terminated on 1.7.2001 in an illegal manner. Junior Engineer had told petitioner on 30.6.2001 that muster roll for the month of July, 2001 had not been received from the management and resultantly, he could not attend his job on 1.7.2001. Petitioner was paid Rs. 1500/- per month at the relevant time. He had worked continuously for more than 240 days in each calendar year before the termination of his services. After the termination of services of the petitioner, he has been rendered unemployed. Neither notice was served upon him before termination of his services nor any enquiry was held in this connection. The termination of his services as workman cannot be sustained under law. He prays for reinstatement of his services alongwith other service benefits.

3. The claim of the petitioner has been contested and resisted by the respondent by filing reply in which preliminary objections have been raised to the effect that neither petitioner has cause of action nor his claim is maintainable. On merits, it is pleaded that petitioner was initially engaged on this job on 26.7.1984. He worked on this job upto 25.9.1984 at the first instance. Thereafter, he left the job at his own volition. He approached the respondent for reengagement of his services. The petitioner was engaged as casual labourer/worker till 20.2.2000. He again left the job voluntarily on 21.2.2000. He had not completed continuous service of 240 days in calendar year. He has not acquired the status of a temporary workman. His status was that of casual worker. He had himself left the job voluntarily. There was no need to serve a notice upon him nor he was entitled for the claim of compensation. The action of the respondent Electricity Board is legal and tenable in the eyes of law. It is disputed that his services have been terminated in an illegal manner by the respondent. With these pleas dismissal of the claim petition is sought.

4. A separate rejoinder has been filed by the petitioner in which the averments made in the written statement have been disputed and contents of the statement of claim have been re-agitated.

5. The following issues have been framed.

1. Whether the services of the petitioner have been illegally terminated by respondent w.e.f. 20.2.2000 without complying the provisions of I.D. Act, 1947? If so, its effect?

. OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? . . .OPP.
3. Whether the petition in the present form is not maintainable? . . .OPR.
4. Whether the petition is barred by limitation? . . .OPR.
5. Relief.

6. Parties have led ocular and documentary evidence. After the closure of the evidence of the parties, I have heard Ld. Advocates at length and perused the entire case file with care.

7. For the reasons to be recorded hereinafter, my issue wise findings are as under:

Issue no.1 Yes.

Issue no.2 Yes. Entitled to reinstatement with seniority and continuity without back wages.

Issue no.3 No

Issue no.4 No

Relief. Reference answered in affirmative as per operative part of award.

Reasons for findings

Issue no.1.

8. On this issue, statement on oath of PW-1 Balwan Singh petitioner is material. He states that he was engaged as T-mate/beldar in the year, 1982. He had worked at Electricity Sub Division Barotiwala till 2000. His services were terminated in the month of Feb., 2000. Before termination of his services, he had completed 240 days in each calendar year without any break in his service. He had drawn regular wages from Electricity Board during aforesaid period. He was not issued notice relating to termination of his services. His juniors were retained in the job and his services were dispensed with in an illegal manner. He has sought reinstatement of his services.

9. Significantly, he (PW-1) has been subjected to lengthy cross examination. His constant stand during the course of his cross examination is that he has rendered regular service to the Electricity Board. It is denied by him that he was irregular in attending his job. It is also disputed by him that he had not completed 240 working days during calendar year. Thus, it becomes manifestly clear on record from the perusal of the testimony of PW-1 Balwan Singh that he has continuously worked for 240 days in calendar year preceding the termination of his service and that he had not left the job at his own volition. There is nothing in his statement which can render his deposition unworthy of reliance. Thus, version on oath of PW-1 Balwan Singh is clear and categorical on the point that his services have been terminated by the Electricity Board in an illegal manner.

10. It is noteworthy here that respondent Electricity Board has examined RW-1 Ram Pal Clerk in support of its cause. His statement on oath goes to show that petitioner Balwan Singh was employed as beldar on daily wages on 26.6.1984 and that he remained on this job till 21.2.2000. This part of the testimony of RW-1 Ram Pal Clerk clinches the whole issue. It means that petitioner has rendered services to Electricity Board from the year 1984 to 2000. It is true that RW-1 Ram Pal Clerk also states that petitioner had not completed 240 days on his job. Surprisingly, muster roll or record of the office has not been produced before the Court by respondent Electricity Board to show that petitioner Balwan Singh had not completed 240 days as daily wager in calendar year before termination of his services. Strangely enough, this witness has shown his ignorance on this vital aspect of the matter. It is not understandable as to why aforesaid material record including muster roll relating to the job of petitioner Balwan Singh has been withheld from the Court. This record is in the custody of Electricity Board and as such it was incumbent upon the Electricity

Board to produce aforesaid record before the Court in order to show that petitioner Balwan Singh had not completed 240 days as daily wage in calendar year before termination of his services. The withholding of material evidence by Electricity Board from the Court renders its cause unworthy of reliance.

11. Hence, comparative study of the evidence having been led on record by parties goes to show that petitioner has not left the job voluntarily. Rather, it emerges on record that plea of respondent Electricity Board to the effect that petitioner has left the job voluntarily, appears to be figment of imagination and no reliance can be placed on the same. Hence, it can safely be said that the services of the petitioner have been terminated without complying the provisions of section 25F and 25G of Industrial Disputes Act, 1947. The issue in question is answered accordingly.

Issue no.2

12. Since, I have held while deciding issue no.1 that the services of the petitioner have been terminated in an illegal manner, so, he is entitled for reinstatement. Further, it is to be noticed that there is no reliable evidence on record at the behest of the petitioner to show that he was not gainfully employed after the termination of his services thus he cannot be said to be entitled for back wages. The issue in question is answered accordingly.

Issue no.3

13. Since, the services of petitioner have been terminated in an illegal manner, so, this reference petition is maintainable for the relief claimed. Hence, the issue in question is answered accordingly.

Issue no.4

14. Neither much is being argued on this issue nor it has been shown as to how this petition is barred by limitation. In this view of matter issue in question cannot be answered in affirmative.

Relief

In view of my issue wise discussion and decision, claim of the petitioner succeeds and is hereby allowed and resultantly, petitioner is ordered to be reinstated in service forthwith alongwith seniority and continuity. However, petitioner is not entitled to back wages as he has not been able to prove on record that he was not gainfully employed after the termination of his services. The reference in question is answered accordingly. Let copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st day of December 2010.

D.S KHENAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI D.S KHENAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA (H.P).

Ref no. 52 of 2008
Instituted on 8.9.2008.
Decided on. 17.1.2011.

Prem Singh S/o Shri Mohan Lal R/o Village Munder, P.O Kungal Balti, Sub Teshil Nankhari, Tehsil Rampur, District Shimla, HP. .Petitioner.

VS.

The Divisional Manager, H.P. State Forest Corporation (Forest Division) Rampur Bushehr, District Shimla, HP. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Balwant Thakur, Advocate.
For respondent: Shri B.M Chauhan, Advocate.

AWARD

1. The following reference has been received from appropriate government for adjudication:

”Whether the termination of services of Shri Prem Singh S/o Shri Mohan Lal, daily wages Field man w.e.f. 15.1.2005 by the Divisional Manager, HP State Forest Corporation, Rampur, District Shimla without complying the provisions of section 25-F & G of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, amount of compensation, back wages and seniority the aggrieved workman is entitled to?”

2. Brief facts of the case are that petitioner-workman was engaged by respondent Forest Corporation as Fieldman in the year, 1989 on daily wage basis. His initial appointment was at Nankhari Sub Division of Forest Corporation. He had continuously worked for more than 240 days in each calendar year till 2003. He was transferred from Forest Division Nankhari to Forest Division Rampur in the year, 2003. His service conditions were changed arbitrarily and illegally. He was posted as conductor in the Truck of Forest Corporation. He was detailed for duty to various places like Nahan, Baddi, Nalagarh and Kumarhatti. A request was made by him to Divisional Manager Forest Corporation to the effect that it was not possible for him to travel with the Truck to distant places. Ultimately, his services were terminated by the Forest Corporation on 15.1.2005 in violation of the provisions of section 25-F of Industrial Disputes Act. During the period of his service of fourteen years, he had completed 240 days in each calendar year. He was having good service record. He was performing his duties diligently. His services were terminated in an illegal manner by the respondent Forest Corporation. On many occasions, he requested respondent Forest Corporation seeking reengagement of his services but in vain. A demand notice was also sent by him to Forest Corporation for the purpose of reengagement of his services with consequential benefits but in vain. He had approached Conciliation Officer, Rampur to seek redressal of his grievance. The conciliation efforts were also not successful. Ultimately, present reference was issued by the appropriate government. With these pleas, he has sought reinstatement of his services with consequential benefits.

3. The claim of petitioner-workman has been contested and resisted by the respondent Forest Corporation by filing written statement in which preliminary objection has been raised to the effect that claim petition is not maintainable. On merits, it is disputed that services of petitioner have been terminated in an illegal manner. It is admitted that petitioner was initially engaged as Fieldman in Nankhari unit of the Forest Corporation on daily wages on 18.7.1989 to perform watch and ward duty. He used to remain absent from his duties. He was habitual absentee from duty. His services were terminated due to willful absent from duty. He was also negligent in performing his duties. He had remained willfully absent from duty continuously for a period of five-six months before termination of his services. Contents of demand notice were untrue. It is denied that he was in the continuous service for a period of 240 days preceding twelve months period. With these averments, dismissal of statement of claim is sought.

4. A separate rejoinder has been filed by the petitioner-workman in which contents of statement of claim have been re-agitated and averments of written statement have been denied and disputed.

5. The following issues have been framed.

1. Whether the retrenchment of services of petitioner by the respondent w.e.f. 15.1.2005 without complying with the provisions of section 25F & G of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .OPP.
2. If issue no.1 is proved, to what relief of service benefits, amount of compensation, back wages and seniority, the petitioner is entitled to? . . .OPP.
3. Relief.

6. Parties have led ocular and documentary evidence in support of their cause. After the closure of the evidence of the parties, I have heard Ld. Advocates at length and perused the entire case file with care.

7. For the reasons to be recorded hereinafter, my issue wise findings are as under:

Issue no.1	No.
Issue no.2	No.
Relief.	Reference answered in negative per operative part of award.

Reasons for findings

Issue no.1.

8. The controversy interse the parties lies in short compass. Pleas of petitioner-workman are that he had completed 240 days in the preceding twelve months period and as such his services have been terminated in an illegal manner by the respondent Forest Corporation. On the other hand, stand of respondent Forest Corporation is that petitioner-workman had left the job voluntarily and that he had not completed continuous service of 240 days preceding the date with reference to which calculation is to be made.

9. In order to appreciate contentions of the parties in its proper perspective, a glance is required to be made at the ocular and documentary evidence having been led on record by them. Significantly, workman Prem Singh has come in the witness box as PW-1 to say on oath that he was engaged as Field man in the year, 1989 on daily wage basis. He was initially posted at Nankhari Sub Division of Forest Corporation. He had continuously worked till the year, 2003 for more than 240 days in each calendar year. He was transferred from Nankhari to Forest Division,

Rampur in the year, 2003 in an illegal manner. He was detailed for duty as conductor in Truck. He was also deputed for duties to places like Nahan, Baddi, Nalagarh and Kumarhatti during this period. He requested Divisional Manager Forest Corporation to the effect that it was not possible for him to travel with the Truck to distant places. On this, his services were terminated on 15.1.2005 without complying the provisions of section 25F of Industrial Disputes Act. He had rendered continuous service of more than 240 days in each calendar year during the span of his fourteen years of service. He was having good service record. His services have been terminated in an illegal manner by the respondent Forest Corporation and as such he deserves to be reinstated with consequential benefits. This is sum and substance of his examination-in-chief. He has been subjected to lengthy cross-examination by Ld. Counsel for the respondent Forest Corporation. In his cross-examination, he has admitted that he remained absent from his duties during the months of June to August in the year, 2003. He has also admitted that he had worked for 224 days during the calendar year of 2003. It is also admitted by him that he had worked for 29 days during the calendar year of 2004. It is also admitted by him that he had not worked w.e.f. 18.5.2004 to 31.12.2004. He has also tendered in evidence chart of mandays Ex. PB. A perusal of the testimony of PW-1, Prem Singh coupled with the contents of mandays chart Ex. PB goes to show that he had not completed 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

10. It is fairly settled that it is for the workman concerned to prove that he has in fact completed 240 days in the preceding twelve months period. Aforesaid ocular and documentary evidence having been led on record by the workman is indicator of the factum that he has not completed 240 days in the preceding twelve months.

11. Further more, it is noteworthy here that testimony of RW-1 Yogesh Parsad Gupta, Divisional Manager of Forest Corporation reveals that Prem Singh workman used to remain absent from his duties. He was not performing his duties properly. He remained absent from duty from 1.5.2004 and his explanation in writing was called by Assistant Manager which is Ex. R-1. He joined his duties on 19.5.2004, but, did not submit his reply. Again, he absented from duty from 27.5.2004. He was asked to join his duties vide notice Ex. R-2 dated 16.6.2004 but in vain. Again, notices Ex. R-4 and Ex. PD were issued to him to join his duty but in vain. Ultimately, his services were terminated on 15.1.2005. Nothing could be extracted from his cross-examination by Ld. Counsel for the petitioner which could have rendered his deposition unworthy of reliance. Thus, it merges on record from the testimony of RW-1 Yogender Prasad Gupta that petitioner-workman was habitual absentee from duties and ultimately, his services were terminated when he did not respond to join his duties. Further more, there is ample evidence on record reliable in nature to show that petitioner-workman has also not completed 240 days in the preceding twelve months period.

12. Ld. Counsel for the petitioner has argued with vehemence that there has been non compliance of provisions of section 25F and 25G of Industrial Disputes Act and resultantly his termination cannot sustain under law. Reliance has been placed on *AIR 2010 Supreme Court 1236* in support of his cause. Relevant paras (B) and (C) are reproduced for the sake of convenience:

(B) "**Industrial Disputes Act (14 of 1947), S. 25-F- Retrenchment-Continuous service of 240 days-Burden of proof-Workman hired on daily wages basis- Thus, he would have difficulty in having access to all official documents, muster rolls etc., in connection with the service-Workman claimed disposed that he worked for 240 days- Burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.**"

(C) “Retrenchment- Last come first go- Services of some of employees junior to respondent workman were continued after respondent was discharged from its duties- Thus, principle of last come first go as envisaged under section 25-G not followed-Further, respondent’s service was terminated without complying with provisions of section 25F-No delay in approaching Labour Court-Setting aside of order of retrenchment- No interference.

13. On the other hand, it is urged by the Ld. Counsel for the respondent Forest Corporation that petitioner-workman was habitual absentee and that he has left his job voluntarily and that he has also not completed 240 days in the preceding twelve months period.

14. In order to answer submissions of Ld. Counsel for the parties, it has to be stated that there is reliable evidence on record showing that petitionerworkman has not completed 240 days of continuous service preceding the date with reference to which calculation is to be made. A perusal of mandays chart Ex. PB having been tendered in evidence by the workman goes to show that he has not been able to establish on record that he has completed 240 days in preceding twelve months period. The evidence having led on record by the parties goes to show that petitioner-workman was called upon to join his duties when he remained absent from his job, but, he did not respond favourably. Therefore, it becomes manifestly clear on record that the services of the petitioner-workman have not been terminated in an illegal manner by the respondent Forest Corporation nor it can be said that there has been violation of provisions of section 25F and 25G of Industrial Disputes Act.

15. The authority having been cited by the Ld. Counsel for the petitioner (supra) has been perused with care. In this authority, it has been held that workman had claimed and deposed that he had worked for more than 240 days and that employer had not produced relevant record qua the service of the workman before the Court and in these circumstances adverse inference was drawn against the employer for withholding material evidence of record from the Court. In the present case, entire record relating to dispute interse the parties has been tendered in evidence. No document has been withheld from this Court by respondent Forest Corporation. Chart of mandays has been tendered in evidence by the workman. Hence, the facts of this case are quite different and distinct from the facts stated in this authority and as such, this authority is of no avail to the cause of the petitioner-workman.

16. Having regard to the nature of evidence led on record by the parties coupled with related peculiar facts and circumstances of this case, conclusion is inescapable to the effect that the issue in question cannot be answered in affirmative.

Issue no.2.

17. I have held while deciding issue no.1 above that the services of petitioner-workman have not been terminated in an illegal manner, so, he is not entitled for any kind of relief. The issue in question is answered accordingly.

Relief.

In view of my issue wise discussion and decision, claim of the petitioner stands dismissed and it is held that his services cannot be said to have been terminated in an illegal manner. Accordingly, the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 17th Day of Jan. 2011.

D.S KHENAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI D.S KHENAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Reference no 72 of 2008.
Instituted on. 3.12.2008
Decided on. 30.12.2010.

Karan Singh S/o Shri Pala Ram R/o Village Sureti Jakhal, P.O Sureti Kalan, District
Mahendergarh, Haryana. .Petitioner.

Vs.

Managing Director, Chandra Lakshmi Tempered Glass Company Pvt. Ltd. Industrial Area,
Barotiwala, District Solan, HP. .Respondent.

Reference Under Section 10 of Industrial Disputes Act, 1947

For petitioner: Shri, Nitin Mishra, Advocate.
For respondent: Shri R.S Thakur, Advocate.

AWARD

1. The following reference has been received from appropriate government for adjudication:

“Whether action of management of M/s Chandra Lakshmi Tempered Glass Company Pvt. Ltd. Industrial Area, Barotiwala, District Solan, HP to terminate the services of Shri Karan Singh S/o Shri Pala Ram w.e.f. 3.5.2007 without conducting any domestic enquiry and offering any chance to hear him and also without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, seniority and amount of compensation the aggrieved workman is entitled to from above management?”

2. Brief facts of the case are that petitioner workman was engaged by respondent company as Machine Operator in April, 1988. His monthly salary was fixed at Rs. 3,000/-. His services were terminated on 27.2.2007 in an illegal manner. The mandatory requirement of section 25F of the Industrial Disputes Act was not complied. He had completed more than 240 working days in each and every calendar year before his illegal termination. An opportunity was not afforded to him to defend his cause when his services were terminated. Neither any enquiry was conducted by the respondent management nor opportunity of being heard was given to him at the time of termination of his services. He approached respondent management for reengagement of his services but in vain. Aforesaid acts of the respondent management in respect of termination of his services cannot sustain under law. With these averments, he has sought reinstatement of his services alongwith other service benefits.

3. The claim of the petitioner has been contested and resisted by the respondent by filing reply in which preliminary objections have been raised to the effect that neither petitioner has cause of action nor claim is maintainable. On merits, it is admitted that services of petitioner were engaged as Grinder in the year, 1988. At the time of removal of his services, he was drawing the salary/wages of Rs. 3,000/-. He had created nuisance by assaulting other workmen in factory premises during the duty hours. His services were terminated in accordance with law. Proper enquiry under Industrial Disputes Act was conducted in order to terminate the services of petitioner. His services were terminated on 27.2.2007 in accordance with the provisions of Industrial Disputes Act. It is denied that his services were terminated in an illegal manner. He was afforded proper opportunity to defend his cause. Chargesheet and relevant documents had also been sent to the petitioner by post, but, he had avoided to receive the aforesaid documents from postal authorities. Thus, the services of petitioner have been terminated when he was found guilty of indiscipline during duty hours. With these pleas, dismissal of claim is sought.

4. The following issues have been framed.

1. Whether the action of the respondent to terminate the services of the petitioner is illegal and unjustified as alleged? . . .OPP.
2. Relief.

5. Parties have led ocular and documentary evidence in support of their cause. After the closure of the evidence of the parties, I have heard Ld. Advocates at length and perused the entire case file with care.

6. For the reasons to be recorded hereinafter, my issue wise findings are as under:

Issue no.1 Yes.

Relief. Reference is partly answered in favour of the petitioner.

Reasons for findings

Issue no.1.

7. On oath, PW-1 Karan Singh (petitioner) says that he was engaged as an operator on 1.4.1988 by respondent company. His services were terminated on 28.2.2007 in an illegal manner. No domestic enquiry was conducted by respondent company while terminating his services. He was not served with notice. He made representations to the Managing Director of the company in this connection but in vain. During the course of conciliation proceedings, respondent did not appear. He seeks reinstatement alongwith consequential benefits. Significantly, he (PW-1) has been subjected to lengthy cross examination by the respondent. His stand during the course of cross examination is that his services have been terminated in an illegal manner. It is denied by him that he had picked up quarrel with coworker Jagat Singh on 27.2.2007. His stand on oath is clear and categoric on the point that his services have been terminated by the respondent in an illegal manner and that he has not left the job voluntarily. It is to be noted here that statement of PW-1 Karan Singh gets strength from the deposition of PW-2 Jagat Singh who states that he did not pick up quarrel with petitioner Karan Singh during duty hours. During his cross examination, he has denied that he picked up quarrel with Karan Singh (petitioner) inside factory premises at 9.20 AM. Thus, it becomes evident from the reading of the depositions of PW-1 Karan Singh and PW-2 Jagat Singh that services of petitioner had been terminated in an illegal manner by the respondent and that he did not commit indiscipline by indulging in quarrel with co-worker inside factory premises during duty hours. It is also apparent from the aforesaid evidence that petitioner Karan Singh has not left the job voluntarily.

8. On the other hand, stand on oath of RW-1 Ramesh Chand Goel official of respondent company is indicator of the factum that petitioner had left the job voluntarily and that enquiry was conducted against him and after conducting the enquiry, his services were terminated in accordance with law. Surprisingly, neither report of enquiry has been tendered in evidence nor Enquiry Officer has been examined on oath nor evidence has been led to show that Enquiry Officer was appointed by the respondent management to conduct domestic enquiry nor there is evidence to show that an opportunity of being heard was afforded to the petitioner during the course of enquiry. Therefore, it can safely be concluded that the services of the petitioner had been terminated without complying the provisions of Industrial Disputes Act because there is clear cut evidence on record to show that petitioner was working with the respondent company for the last many years. Thus, it merges on record that services of petitioner had been terminated without holding domestic enquiry in order to establish his act of indiscipline. Moreover, there is no reliable evidence led on record at the behest of the respondent company that petitioner has left the job voluntarily. In these circumstances, it can safely be said that the services of petitioner have been terminated in an illegal manner. Admittedly, factory has been closed on 10.11.2008 and its operations have come to halt. This factum stands established on record from the reading of the depositions of PW-1 Karan Singh and RW-1 Ramesh Chand Goel. In these circumstances, order for reinstatement of services of petitioner will not serve any purpose. Therefore, ends of justice will meet if adequate amount of compensation is awarded to the petitioner. Hence, having regard to the total number of years having been rendered by the petitioner in the services of respondent company and also keeping in mind monthly salary/wages drawn by him coupled with the factum that there is no reliable evidence to show that he had not been gainfully employed after the termination of his services, it would be appropriate and just if Rs. 55000/- are awarded as compensation to him. Aforesaid conclusion also draws its strength from **(2010) 9 Supreme Court Cases 126**. The issue in question is answered accordingly.

Relief

In view of my issue wise discussion and decision, claim of petitioner stands allowed to the extent that respondent company shall pay Rs.55000/- by way of compensation to the petitioner. The remainder part of his claim stands negated. The reference in question is answered accordingly. Let copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of December 2010.

D.S KHENAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI D.S KHENAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Reference no 75 of 2008.
Instituted on. 10.12.2008
Decided on. 30.12.2010.

Pitamber Dutt S/o Shri Dev Raj R/o Village Dora, P.O Khedawali, Tehsil Kalka, District
Panchkula, Haryana. . .Petitioner.

Vs.

Managing Director, Chandra Lakshmi Tempered Glass Company Pvt. Ltd. Industrial Area,
Barotiwala, District Solan, HP. . Respondent.

Reference Under Section-10 of Industrial Disputes Act,1947.

For petitioner: Shri, Nitin Mishra, Advocate.
For respondent: Shri R.S Thakur, Advocate.

AWARD

1. The following reference has been received from appropriate government for adjudication:

“Whether action of management of M/s Chandra Lakshmi Tempered Glass Company Pvt. Ltd. Industrial Area, Barotiwala, District Solan, HP to terminate the services of Shri Pitamber Dutt S/o Shri Dev Raj w.e.f. 3.5.2007 without conducting any domestic enquiry and offering any chance to hear him and also without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, seniority and amount of compensation the aggrieved workman is entitled to from above management?”

2. Brief facts of the case are that petitioner workman was engaged by respondent company as Machine Operator in May, 1985. His monthly salary was fixed at Rs. 3600/-. His services were terminated on 27.2.2007 in an illegal manner. The mandatory requirement of section 25F of the Industrial Disputes Act was not complied. He had completed more than 240 working days in each and every calendar year before his illegal termination. An opportunity was not afforded to him to defend his cause when his services were terminated. Neither any enquiry was conducted by the respondent management nor opportunity of being heard was given to him at the time of termination of his services. He approached respondent management for reengagement of his services but in vain. Aforesaid acts of the respondent management in respect of termination of his services cannot sustain under law. With these averments, he has sought reinstatement of his services alongwith other service benefits.

3. The claim of the petitioner has been contested and resisted by the respondent by filing reply in which preliminary objections have been raised to the effect that petitioner has no cause of action and that this claim is not maintainable. On merits, it is admitted that services of petitioner were engaged as Machine Operator in the year, 1985. At the time of removal of his services, he was drawing the salary/wages of Rs. 3450/-. He had created nuisance by assaulting other workmen in factory premises during the duty hours. His services were terminated in accordance with law. Proper enquiry under Industrial Disputes Act was conducted in order to terminate the services of petitioner. His services were terminated on 27.2.2007 in accordance with the provisions of Industrial Disputes Act. It is denied that his services were terminated in an illegal manner. He was afforded proper opportunity to defend his cause. Chargesheet and relevant documents had also been sent to the petitioner by post but he had avoided to receive the aforesaid documents from postal authorities. Thus, the services of petitioner have been terminated when he was found guilty of indiscipline during duty hours. With these pleas, dismissal of claim is sought.

4. The following issues have been framed.

1. Whether the action of the management of respondent to terminate the services of the petitioner w.e.f. 3.5.2007 without conducting any domestic enquiry and offering any chance to hear him and also without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .OPP.

2. If issue no.1 is proved to what relief of service benefits, seniority and amount of compensation the petitioner is entitled to from the respondent management?
..OPP.
3. Relief.

5. Parties have led ocular and documentary evidence in support of their cause. After the closure of the evidence of the parties, I have heard Ld. Advocates at length and perused the entire case file with care.

6. For the reasons to be recorded hereinafter, my issue wise findings are as under:

Issue no.1	Yes.
Issue no.2	Entitled to lumb-sum amount of compensation.
Relief.	Reference partly answered in favour of the petitioner.

Reasons for findings

Issue no.1.

7. To answer the issue in question in its proper perspective, statement on oath of PW-1 Pitamber Dutt petitioner is required to be read with care. He states on oath that he was engaged as helper on daily wages in the month of May, 1985 by respondent company. On 28.2.2007, his services were terminated in an illegal manner by the respondent company without conducting domestic enquiry. He had made representations Ex. PA and Ex. PB to Managing Director of the company about the illegal termination of his services but in vain. He had made an application to Labour Inspector in this connection, but, during conciliation proceedings, respondent did not appear. Significantly, he (PW-1) has been subjected to lengthy cross examination. His constant stand during the course of his cross examination is that quarrel did not take place between him and coworker Jagat Singh on 27.2.2007 nor he had left his job voluntarily. His further stand on oath is that no enquiry was conducted by the respondent company and that termination order was never served upon him. Thereafter, it becomes evident from the reading of the testimony of PW-1 Pitamber Dutt that his services had been terminated by the respondent company in an illegal manner.

8. The version having been unfolded on oath by PW-1 Pitamber Dutt finds necessary corroboration from the testimony of Jagat Singh PW-2, who states on oath that quarrel did not take place between him and Pitamber Dutt during duty hours. It is disputed by him during the course of cross examination that the quarrel had taken place between him and petitioner during duty hours in factory premises. Thus, this witness has corroborated the version of PW-1 Pitamber Dutt on oath to the effect that quarrel had not taken place between them.

9. Notably, two silent features has come on record from the ocular evidence of the petitioner ; firstly that the services of petitioner Pitamber Dutt had been terminated in an illegal manner ; secondly that no quarrel had taken place between them.

10. On the other hand, stand on oath of RW-1 Ramesh Chand Goel is that services of petitioner had been terminated after conducting proper enquiry. Surprisingly, neither report of enquiry has been tendered in evidence nor Enquiry Officer has been examined on oath nor evidence has been led to show that Enquiry Officer was appointed by the respondent management to conduct domestic enquiry nor there is evidence to show that an opportunity of being heard was afforded to the petitioner during the course of enquiry. Admittedly, petitioner was working with the respondent company continuously for the last many years and resultantly, his services could have not been dispensed with in slipshod manner without complying the provisions of Industrial Disputes Act. It

appears that the services of the petitioner had been terminated without holding domestic enquiry in order to establish the guilt of indiscipline of workman/petitioner. In these circumstances, it can safely be said that there is gain of truth in the evidence of the petitioner to the effect that his services had been terminated in an illegal manner because there is lack of evidence at the behest of the respondent company on record to show that the services of the petitioner had been terminated as per law.

11. The issue in question is answered accordingly.

Issue no.2

12. While deciding issue no.1, it has been already held above that the services of the petitioner have been terminated in an illegal manner. Admittedly, factory has been closed on 10.11.2008 and its operations have come to halt. This factum becomes evident from the reading of the depositions of PW-1 Pitamber Dutt and RW1 Ramesh Chand Goel. In these circumstances, order for reengagement of services of petitioner will not serve any purpose. Therefore, ends of justice will meet if adequate amount of compensation is awarded to the petitioner. Hence, having regard to the total number of years having been rendered by the petitioner in the services of respondent company and also keeping in mind monthly salary/wages drawn by him coupled with the factum that there is no reliable evidence to show that he had not been gainfully employed after the termination of his services, it would be appropriate and just if Rs.65000/- are awarded as compensation to him. Aforesaid conclusion also draws its strength from **(2010) 9 Supreme Court Cases 126**. The issue in question is answered accordingly.

Relief

In view of my issue wise discussion and decision, claim of petitioner stands allowed to the extent that respondent company shall pay Rs.65000/- by way of compensation to the petitioner. The remainder part of his claim stands negated. The reference in question is answered accordingly. Let copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of December 2010.

D.S KHENAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI D.S KHENAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA (H.P).

Reference no 87 of 2001.
Instituted on. 16.5.2001.
Decided on. 14.1.2011.

Samtal Workers Union (BMS), Parwanoo, District Solan, HP.

. .Petitioner.

Vs.

M/s Samtal Color Ltd., Plot no.6, Industrial Area, Sector-2 Parwanoo, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri O.P Tyagi, Advocate

AWARD

1. The following reference has been received from appropriate government for adjudication:

“Whether the lockout resorted to by the management of M/s Samtal India Ltd., Parwanoo, District Solan, HP w.e.f. 21.2.2000 vide their notice dated 20.2.2000 in their factory, is legal and justified? If not, to what relief of pay and amount of compensation, the workers aforesaid as a result of this lock out are entitled to?”

2. Brief facts of the case are that respondent company deals in manufacturing of parts of Television of varied qualities. Workers of respondent company are founder members, office bearers and major constituents of petitioner union. The management of company became hostile towards the constituents of petitioner union. The respondent management indulged in hostile and vindictive activities towards the union. The union of workers hoisted its flag on National Highway far away from the boundary of the factory on which senior officers of the management clashed with the workers. This incident was also witnessed by the Police. In order to take revenge, respondent company declared illegal lock-out on 21.2.2000. A notice was displayed in the morning of 21.2.2000 out side the factory gate declaring lock-out. Respondent company obstructed the entry of the workers into the premises of the factory. The lock-out was declared without complying the provisions of section 25F of the Industrial Disputes Act and this kind of lock-out is void abinitio. Aforesaid illegal act of the management of respondent company entitles the workers to declaration for continuation of service with full back wages. The union of workmen demanded the lifting of illegal lock-out but in vain. The workmen were rendered jobless despite the fact that they were present at the gate of the factory and were ready for work. However, they were not permitted to enter into the premises of factory in order to facilitate them to do the work. The illegal lock-out was protested and agitated by the petitioner union. On the intervention of appropriate Government, Labour Department and District Administration, illegal lock-out was lifted on 25.3.2000 after a lapse of thirty five days. The respondent company had ordered transfers, retrenchment, termination, suspension and dismissal of dozens of workers/constituents of union including office bearers. This illegal action and unfair labour practice was resorted by the respondent company as a result of the formulation of trade union by workers. The management of respondent company had not acted fairly in order to make payment of wages for lock-out period. They had failed to concede legitimate demands regarding reinstatement of constituents of union. The action of management of respondent company to declare lockout and closure of factory is illegal and malafide and same is void abinitio. With these pleas, reference is sought to be answered in favour of the petitioner union by declaring its constituents to be in continuous service. Further more, illegal orders passed by the respondent company in respect of suspension, termination and dismissal of its constituents may be set aside.

3. The claim of the petitioner union has been contested and resisted by the respondent M/s Samtal India Ltd. by filing written statement in which preliminary objection has been raised to the effect that present reference cannot sustain under law. On merits, it is admitted that respondent company manufactures parts of Television. It is disputed that workers of respondent company are founder members, office bearers and major constituents of petitioner union. It is denied that respondent company adopted hostile attitude towards petitioner union. It is also denied that management of respondent company had clash with the workers of union at the time of hoisting of flag in the presence of Police. It is disputed that lock-out was declared by the respondent company

in an illegal manner. Rather, it is pleaded that lock-out was declared by the management of respondent company in terms of employer's notice dated 20.2.2000. The lockout was legal and justifiable in the eyes of law. The respondent company had always been considerate and responsive towards the genuine demands of the employees. The workers of the union had been advised to show their willingness to comply with the express and implied terms of employment. The workmen were simply asked to comply with the terms of the employment in order to facilitate continuous and regular work in the factory. The management of respondent company did not violate provisions of law. The services of workmen were not terminated by the respondent company. It is denied that lock-out was lifted after lapse of thirty five days. The respondent company did not take any action with malice or ill will against workmen or office bearers of union. The allegations of victimization against the workmen are denied. The workmen affected due to lockout are not entitled to wages or compensation because lock-out was not illegal nor employers had closed the establishment. The signatories of statement of claim are not legally competent or authorized to prosecute this claim and resultantly this statement of claim deserves to be rejected. With these averments, prayer has been made to the effect that reference deserves to be answered in negative and statement of claim deserves dismissal.

4. After the filing of written statement by respondent M/s Samtal India Ltd., corrigendum was issued by appropriate government which reads as follows:

“Inview of amendment in the name of the factory from M/s Samtal India Ltd, Parwanoo, District Solan, HP to M/s Samtal Color Ltd., Parwanoo, District Solan, HP, requested vide application dated 17.7.2002, submitted by the management to the Labour Commissioner-cum-Chief Inspector of Factories, Hp and carried out on 11.2.2003 by incorporating the amendment in the factory licence of the factory, issues of dispute between Samtal Workers Union (BMS), Parwanoo, District Solan, HP and the management of M/s Samtal India Ltd., Parwanoo District Solan, HP sent as a reference vide this office notifications of even no. dated 5.4.2000 and 3.5.2001, may be read as issue of dispute between Samtal Workers Union (BMS) Parwanoo, District Solan, HP and M/s Samtal Color Ltd., Parwanoo, District Solan, HP”.

5. Separate written statement has been filed by M/s Samtal Color Ltd. in which it is pleaded that reference in question is not sustainable in the eyes of law nor matter in dispute can be termed to be industrial dispute. The factory of M/s Samtal India Ltd. has been purchased by M/s Samtal Color Ltd., and M/s Samtal Color Ltd. has paid the price having been mutually agreed inter se. It is neither a case of merger nor this is a case of change of name of factory. Relationship of employers and workmen did not exist between M/s Samtal Color Ltd. and workmen on 21.2.2000. The corrigendum has been issued by the appropriate government in mechanical, illegal and arbitrary manner. Dispute if any between the workmen of M/s Samtal Color Ltd. and their workmen stands settled in terms of settlement under section 12(3) of Industrial Disputes Act dated 9.7.2004 before the date of amendment in the order of reference. M/s Samtal Color Ltd. was not employer of establishment of factory situated at Parwanoo during the year, 2000. No cause of action had arisen against M/s Samtal Color Ltd. in the year, 2000. However, contents of para no. 2 to 16 of written statement having been filed by M/s Samtal India Ltd. have been adopted by replying respondent. The claimant union or workmen are not entitled for any kind of relief from the replying respondent company. With these averments reference is required to be answered in negative with further prayer to dismiss the statement of claim.

6. Separate rejoinder has been filed by the petitioner union in which contents of statement of claim have been re-agitated and averments of written statement have been denied and disputed.

7. The following issues have been framed.

1. Whether the lock-out w.e.f. 21.2.2000 in the factory was legal and justified? If not to what relief of pay and amount of compensation the workers are entitled? . . .OPP.
2. Whether the present reference is bad in law and is not maintainable? . . .OPR.
3. Relief.

8. Parties have led ocular and documentary evidence in support of their cause. After the closure of the evidence of the parties, I have heard Ld. Advocates at length and perused the entire case file with care.

9. For the reasons to be recorded hereinafter, my issue wise findings are as under:

- | | |
|------------|--|
| Issue no.1 | No. Workers are entitled for the relief of wages during lock-out period. |
| Issue no.2 | No. |
| Relief. | Reference answered in affirmative per operative part of award. |

Reasons for findings

Issue no.1.

10. Section 22 of Industrial Disputes Act, 1947 relates to prohibition of strikes and lock-outs. Sub section 2 of this section reads as follows:

- ” No employer carrying on any public utility service shall lockout any of his workman-***
- (a) Without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out ; or***
 - (b) Within fourteen days of giving such notice; or***
 - (c) Before the expiry of the date of lock-out specified in any such notice as aforesaid ; or***
 - (d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings”.***

11. A plain reading of aforesaid provision of law goes to show that notice is required to be given before declaration of lock-out. Strangely enough, there is no evidence on record showing that any notice was given by the management of the company to the workers in terms of section 22 (2) of Industrial Disputes Act before the declaration of lock-out in the factory. A notice Ex. PW-1/A has been tendered in evidence by the petitioner union in order to show that there has been violation of provisions of Industrial Disputes Act before the declaration of lock-out in the factory. A glance of this document Ex. PW-1/A is indicative of the factum that lock-out was declared in the factory w.e.f. 6.00 AM on 21.2.2000. There is no document on record having been tendered by the respondent company to show that any notice was displayed showing the intention of the company to declare lock-out.

12. It is noteworthy here that specific stand has been taken on oath by RW-4 Sanjeev Dhiman, official of the respondent company during the course of his cross examination to the effect that company had declared lock-out in the factory despite the sufficiency of work. It is also admitted by him that before 20.2.2000, workers were not intimated by the company about the declaration of lock-out in the factory. It has also been admitted by him that lock-out in the factory continued for thirty five days. Further more, RW-5, Harjeet Singh, manager of the respondent company has also admitted during the course of his cross-examination that two demand notices

were pending before the Conciliation Officer when lock-out was declared by the company. Further, there is statement on oath of RW-2 Sunil Kumar, official of Labour Department to the effect that lock-out was declared by the company in respect of all the workers and that lock-out had not been legalized by competent authority. Therefore, it becomes manifestly clear on record from the aforesaid ocular and documentary evidence that lock-out was declared by the respondent company in violation of the provisions of law and that this lock-out cannot be justified in the eyes of law.

13. Ld. Counsel for the respondent company has placed on record voluminous written arguments consisting in hundreds of pages alongwith seventy five cases of law. The main submissions of Ld. Advocate for the respondent company are three folds; firstly that petitioner union is not competent to prosecute present proceedings because definition of Industrial Disputes Act does not cover the dispute between union and employer; secondly that M/s Samtal Color Ltd. has not succeeded M/s Samtal India Ltd. and as such, this claim is not justifiable against M/s Samtal Color Ltd at the behest of petitioner union; thirdly that settlement had also taken place interse the parties, hence, claim is not maintainable.

14. Ld. Counsel for the respondent company has also relied upon 1993 (1) LLJ Karnatka, 1979 (II) LLJ, 194 S.C, 1981 (43) FLR, 195 Allahabad, 1984 (49) FLR 38 Allahabad, 1987 (2) LLN 968 (Bombay), 2003 (98) FLR 261 Delhi, 2005 (107) FLR 525 Allahabad, 2005 (107) FLR 642 Andhra Pradesh, 2008 (118) FLR, 1156 Allahabad, 2001 (89) FLR, 323 S.C, 2002 (93) FLR, 179 S.C, 2008 (117) FLR 573 S.C, 2006 (110) FLR 97 Allahabad, 2007 (112) FLR 1203 Allahabad, 2007 (112) FLR, Delhi, 2007 (112) FLR Punjab & Haryana, 1969 (1) LLJ 242 S.C, 2003 (4) SCC 161, 2004 SCC (L&S) 816, 1956 (1) LLJ 227 SC, 1970 (II) LLJ 429 SC, 2009 (1) SCC (L&S) 158, 2007 (1) SCC (L&S) 548, 2007 (II) SCC (L&S) 615, 2008 (1) SCC (L&S) 409, 2008 (I) SCC (L&S) 940, 1967 (I) LLJ 834 SC, 1963 (II) LLJ 647, 2006 SCC (L&S) 1637, 2007 (115) FLR, 427 SC, 2007 (114) FLR 22, 1980 Lab. I.C 1298 SC, 2010 SCC (L&S) 335, 2006 (111) FLR, 483 SC, 2005 (105) FLR 842, 1998 (78) FLR 107 SC, 1997 (77) FLR 364 Allahabad, 2010 (124) FLR, 984 Orisa, 2005 (105) FLR 38 SC, 2006 (110) FLR, 473 Bombay, 2006 (110) FLR 606 Kolcatta, 2006 (109) FLR 955 Delhi, 1974 Lab. I.C 1018 SC, 1998 (I) LLJ 1038 Madhya Pradesh, 2002 (I) LLN 721 Bombay, 2007 (III) FLR 639 SC, 2007 (115) FLR 811 SC, 1959 (I) LLJ 420 SC, 1953 (I) LLJ 174 SC, 1967 (I) LLJ 577 Punjab & Haryana, 1961 (II) LLJ 440, 1967 (I) LLJ 430 SC, 1962 (II) LLJ 227 SC, 1983 (II) LLJ 413 SC, 2007 (112) FLR 981, 1960 (I) LLJ 249 SC, 1952 (I) LLJ 796 SC, 1960 (II) LLJ 278 SC, 1980 (II) LLJ 441 Bombay, 2006 (109) FLR 1037 Orisa, 2006 (III) FLR, 592 Callcutta, 2007 (112) FLR 887 SC, 2006 (110) FLR 198 SC, 2007 (112) FLR 1174 Delhi, 2007 (2) SCC (L&S) 813, 1999 (82) FLR 997, 2002 (93) FLR 327 SC, 2003 SCC (L&S) 380, 2005 SCC (L&S) 716, 2006 SCC (L&S) 1081, 2006 SCC (L&S) 1083, 1978 (37) FLR 240 SC, 2008 (119) FLR 479, 2009 (I) SCC (L&S) 70, 2009 (120) FLR 143 SC, 2008 (108) FLR 1001 Bombay.

15. On the other hand, it is urged at the behest of the petitioner union that workers of respondent company have been represented through union and as such petitioner union is competent to pursue the cause of the workers in this case. He next urges that M/s Samtal India Ltd. has been succeeded by M/s Samtal Color Ltd. and that M/s Samtal Color Ltd. has adopted written statement having been filed by M/s Samtal India Ltd. and resultantly, M/s Samtal Color Ltd. has rightly been arrayed as respondent in this case. Further, it is argued that settlement had not taken place interse the parties under law and resultantly this claim is perfectly maintainable in the eyes of law.

16. In order to appreciate first submission of Ld. Counsel for respondent company in its proper perspective, a glance is required to be made at the reference as well as corrigendum having been received from appropriate government. A perusal of both these documents goes to show that

Samtal Workers Union (BMS), Parwanoo has agitated its grievance before the appropriate government and resultantly appropriate government has referred the dispute to this Court for adjudication. Therefore, it is clear from both these documents that present reference has been made to this Tribunal at the instance of Samtal Workers Union. Admittedly, Samtal Workers Union was representing the cause of workers. It cannot be said by any stretch of imagination that Samtal Workers Union was not pursuing the cause of workers nor there is evidence on record to suggest that interest of the workers was not watched by this Union properly. Thus, it can safely be said that petitioner union was representing the cause of workers of respondent company and in these circumstances it cannot be inferred that petitioner union was not competent to agitate the cause of the workers. It is true that Industrial Disputes means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of the employment or with conditions of labour, of any persons. It is also true that Industrial Dispute does not speak about the dispute of difference between employers and union, but, it does speak about the difference or dispute between the employers and workmen. In the present case, M/s Samtal Workers Union has come forward to agitate the cause of workers when lock-out was declared by the company and in these circumstances it can safely be said that dispute has come into offing at the behest of the workers with the management of the company relating to declaration of lock-out and as such it is safe to say that there is a dispute between employers and workmen and this dispute squarely falls within the definition of Industrial Dispute as envisaged under the provisions of section 2 of Industrial Disputes Act. Therefore, first submission having been agitated at bar by Ld. Counsel for the respondent company does not carry merit.

17. So far as the second argument of Ld. Counsel for the respondent company is concerned, it is suffice to say that a clear cut stand has been taken by M/s Samtal Color Ltd. in its written statement to the effect that it has purchased M/s Samtal India Ltd. Further more, written statement of M/s Samtal Color Ltd. also reveals that it has adopted the reply having been filed by M/s Samtal India Ltd. Thus, it becomes evident that M/s Samtal Color Ltd has accepted the averments having been filed by its predecessor contesting the claim of the petitioner union. Thus, it is quite evident on record that M/s Samtal Color Ltd has succeeded M/s Samtal India Ltd. and there is nothing on record to suggest that the establishment of M/s Samtal India Ltd. has not been succeeded by M/s Samtal Color Ltd. There is lack of cogent, convincing and reliable evidence on record at the behest of M/s Samtal Color Ltd. to show that M/s Samtal India Ltd. does not stand succeeded by it in respect of its establishment and manufacturing capabilities. Significantly, RW-5, Harjeet Singh, Manager of the respondent company has admitted in clear cut terms that workers of M/s Samtal India Ltd. had been retained by M/s Samtal Color Ltd. and that the name of M/s Samtal India Ltd. to M/s Samtal Color Ltd. has been replaced by the order of Labour Commissioner. Further more, RW-2, Sunil Kumar also states on oath that M/s Samtal India Ltd., has been registered as M/s Samtal Color Ltd. w.e.f. 11.2.2003 and that Labour Commissioner had also issued corrigendum in this connection and that M/s Samtal Color Ltd. had not filed any objection in connection with issuance of corrigendum. Thus, it stands clearly established on record that M/s Samtal Color Ltd had succeeded M/s Samtal India Ltd. and in these circumstances, it is not appropriate and just to say that M/s Samtal Color Ltd. is not answerable to in appropriate action committed by M/s Samtal India Ltd. while declaring lock-out in an illegal manner at the relevant time. Hence, second submission of Ld. Counsel for the respondent company is also not sustainable in the eyes of law.

18. The third argument of respondent company also does not carry merit because there is no legal and reliable evidence on record to show that settlement had taken place interse the parties regarding the dispute in question. Settlement dated 19.3.2010 has been tendered in evidence by the respondent company with the aid of the statement of RW-1 S.K Kauhsal and same stands admitted in evidence as Ex. RW-1/A-17. Second settlement dated 6.1.2007 Ex. RW- 1/G has been admitted

in evidence at the behest of RW-3 B.C Sunderiyal. A perusal of settlement dated 6.1.2007 is indicative of the factum that this settlement had arrived between workmen namely Suresh Kumar, Hemant Rawat, Sunil Kumar, Guman Singh, Daljeet Singh, Thakur Dass Sharma and management representing namely Sandeep Duggal, Manager and Brij Mohan Sharma, Manager Human Resource Development. It becomes evident from the reading of this document that management was represented by Sandeep Duggal and Brij Mohan at the time of settlement and that workers were represented by aforesaid workmen named above. Surprisingly, none of aforesaid signatories of this settlement has been examined on oath by the respondent company in order to show that dispute interse the parties stands settled amicably. It is not understandable as to why aforesaid persons have not been examined on oath by the respondent company in support of its cause. The non examination of signatories of this settlement leads this court to draw adverse inference against the respondent company. Thus, it can safely be said that this settlement dated 6.1.2007 does not stand proved in accordance with law and as such it cannot be said that dispute interse the parties has been settled on 6.1.2007. The second settlement dated 19.3.2010 reads that workmen namely Hemant Rawat, Gain Chand, Ram Chand, Yashpal, Gopal, Mahesh Chand, V. Rao and Suresh Kumar were signatories of this settlement. They were representing workmen in this settlement. The management was represented by Harjit Singh Rana, Manager Human Resource Development and P.K Nijawan, Manager Production. It is to be noticed here that none of the workmen named above has been examined on oath by the respondent company in order to show that the dispute interse the parties has been settled on 19.3.2010. The non examination of aforesaid workmen goes to show that this settlement has not been proved in accordance with law. Thus, this settlement is mealy a waste paper and same does not carry any kind of sanctity. Therefore, having regard to the above noted peculiar facts and circumstances of this case, it can safely be said that respondent company has not been able to prove on record that dispute stands settled interse the parties by their mutual consent.

19. Further more, aforesaid authorities having been cited by Ld. Counsel for the respondent company have been read with care. The facts of the instant case are quite different and distinct from the facts narrated in these authorities. These authorities are based on their peculiar facts which are not akin to the facts in hand. The ratio laid down in these authorities relates to general principles of declaration of lock-out and matters incidental thereto. It has already been held above in detail that declaration of lock-out by the company cannot be said to be justifiable in the eyes of law. So, aforesaid authorities are of little avail to the cause of the respondent company.

20. Keeping in mind the nature of evidence coupled with related peculiar facts and circumstances of this case, conclusion is inescapable to the effect that lock-out having been declared by the respondent company on 21.2.2000 cannot sustain under law. Admittedly, lock-out remained in operation for thirty five days. Hence, workmen having been deprived from their wages despite their insistence to do work are required to be compensated by way of payment of wages during the course of lock-out period. The issue in question is answered accordingly.

Issue no.2

21. Ld. Counsel for the respondent company has argued with vehemence that this reference is not sustainable in the eyes of law and as such same is not maintainable. On the other hand, it has been urged at the behest of the petitioner union that appropriate government has sent reference to this Tribunal for adjudication and same is required to be answered invariably by this Tribunal. It is also argued that this reference cannot be said to be non maintainable.

22. It is fairly settled that this Tribunal cannot travel beyond the scope of reference. In other words, Tribunal is not free to enlarge the scope of dispute referred to it, but, is required to confine its wisdom to the points specifically mentioned and matters which are incidental thereto. Primarily, this Tribunal is required to adjudicate legality of declaration of lock-out by the

respondent company. A corrigendum was also issued by the appropriate government when M/s Samtal India Ltd., was succeeded by M/s Samtal Color Ltd. It is evident from the reading of the corrigendum that amendment in the factory license of M/s Samtal India Ltd. to M/s Samtal Color Ltd. was incorporated and entire establishment of the former was taken over by the later management. In these circumstances, M/s Samtal Color Ltd. had replaced M/s Samtal India Ltd. and resultantly, this Tribunal is required to answer the aforesaid reference in respect of M/s Samtal Color Ltd as employer in this case. In this view of matter, it cannot be said by any stretch of imagination that reference in question cannot sustain under law nor it can be inferred that this reference is not maintainable. Plea of the respondent management to the contrary does not carry merit and same deserves to be dismissed. The issue in question is answered accordingly.

Relief

In view of my issue wise discussion and decision, claim of the petitioner stands succeeded and is hereby allowed and as such workmen affected by the lock-out are entitled for wages of lock-out period because lock-out has been held to be illegal. The reference in question stands answered accordingly. Let copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th Day of Jan. 2011.

D.S KHENAL,
Presiding Judge,
Industrial Tribunal-cum49
Labour Court, Shimla.

Ref.178/2006

Sh Rohit Kumar V/s The Secy. Khadi Ashram Shimla.

18.12.2010

Present: Shri Sanjeev Kumar, Advocate for petitioner.

None for respondent.

Separate statement of petitioner's Advocate has been recorded. He does not want to prosecute this reference petition. Hence, this reference petition is answered in negative accordingly.

Let a copy of this award be sent to appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced

18.12.2010.

Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 83/06
Date of Institution : 16.5.2006
Date of decision : 23.7.2010

Shri Ram Paul S/o Shri Beli Ram, R/o VPO Makri, Tehsil Naina Deviji, Distt. Bilaspur,
H.P. *Petitioner*

Versus

The Additional Superintending, HPSEB Electrical Division, Bilaspur, H.P. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. R.L. Sharma, adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Ram Paul S/o Shri Beli Ram workman by the Additional Superintending Engineer, Electrical Division, HPSEB, Bilaspur, H.P. w.e.f. 26.4.1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case set up by the petitioner in the statement of claim is that he was appointed as a daily wager in Bilaspur division in 1985 and he continued to work as such till the year 1998. In the year 1988 about 64 workmen had been retrenched by the respondent and the union had approached the Hon'ble High Court by filing a writ petition. The respondent had filed an affidavit in the said writ that the workmen shall be re-engaged subject to availability of work. However in the year 1997 fresh hands about 14 in number had been appointed by the respondent. No opportunity was granted to the petitioner for offering his services which is against the mandate of the Industrial Disputes Act (hereinafter referred to as the Act) and also an unfair labour practice.

3. In the year 1998 the petitioner was re-engaged. Eventually on 26.4.1999 his services were again terminated orally without any notice his services were terminated in violation to the statutory provisions of Act and the Standing Orders of the respondent board. The petitioner had raised an industrial dispute in the year 1999 itself and hence the present reference. The petitioner thus sought to be re-engaged with all consequential benefits.

4. While contesting the claim the respondent inter alia raised the preliminary objection vis-à-vis non-joinder of necessary parties, limitation and that the board stood exempted from the provisions of the Industrial Employment Standing Orders Act, 1946 and as such the petition was not maintainable.

5. On merits it is the case of the respondent that the petitioner was engaged as a beldar w.e.f. 26.9.1986 till 23.12.1988 when he left along with other beldars who had been retrenched by

the board. It is also not denied that thereafter the petitioner was re-engaged fresh w.e.f. 26.11.1998. It is however, further the case of the respondent that the petitioner had been appointed for 99 days against a specific work. Thereafter the petitioner had left job on his own and never turned up again. The compliance of the provisions of Section 25-F of the Act was not required to be made as a petitioner had not completed 240 days in the 12 months preceding his termination and even the Standing Orders were not applicable to the board. The respondent thus sought the dismissal of the reference.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that 4.1.2008 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination from the service of the claimant by the respondent is proper and justified? . .OPP
2. If the above issue is proved in affirmative to what relief of service benefit the petitioner is entitled to the respondent? . .OPP
3. Whether the claim petition is maintainable before this Court? . .OPR
4. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1	: No
Issue No.2	: As per operative part of the award.
Issue No.3	: Yes
Relief	: As per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 & 2 :

9. Both the issues are being taken up together for discussion as they are co-related and intermingled:

10. It indisputably comes to the fore that the petitioner had been appointed by the respondent in the year 1986 and he continued as such till 23.12.1988 when he came to be retrenched with 64 other workmen. The petitioner again came to be re-employed on 26.11.1998 and worked as such till 25.4.1999 when his services were dispensed with.

11. Admittedly at the time of termination the petitioner had not completed 240 days and as such the violation of the principle of Section 25-F does not arise at all.

12. The petitioner however has further averred that the respondent has regularized the services of the workmen who were appointed in the year 1999 by the respondent namely S/Sh. Babu Ram, Nain Singh, Bhag Singh, Rattan Lal and Ram Prakash etc. There is no denial to the said fact. Moreover the case set up by the respondent in defending the termination of the petitioner is that he had been appointed on 26.11.1998 for 99 days against a specific work. Thereafter the petitioner had left the job of his own will and accord and did not ever turn up. The same is the

assertion of RW1 Sh. Krishan Dev Sharma, Senior Executive Engineer, Electrical Division, HPSEB, Bilaspur. Per him since the petitioner had been appointed against a specific work, therefore in accordance with Standing Orders of the HPSEB no notice was required to be served on the petitioner. Finally, after 25.4.1999 the petitioner had abandoned job on his own will. The said witness while appearing as RW1 has also placed on record documents exhibits RW1/B to Ex. RW1/D. One of the documents is the notice of retrenchment issued on 1.11.88, the other is the acknowledgement of the retrenchment notice and third is the mandays chart of the petitioner. Strangely the order appointing the petitioner for a specific purpose and for 99 days have not been placed on record. It was the most vital document to substantiate the plea set up by the respondent. However it has not been placed on record. Even otherwise even if the bald statement of the witness is to be believed the engagement of the petitioner had to come to an end on 3rd March, 1999. That is, if the respondents are to be believed that he was appointed for 99 days only. In the case in hand the petitioner continued to work till 25th April, 1999. There is no explanation as to how the petitioner continued after those 99 days. There is neither any evidence on record to substantiate the plea that the petitioner had abandoned job. No document worth the name has been placed on record to show, so. Since admittedly juniors to the petitioner had been retained by they respondent the action of the board in terminating the services of the petitioner is violative of the provisions of Section 25-G of the Act. The board having engaged person in 1999 and they having been regularized is not disputed. That being so the non compliance of the provisions of Section 25-G of the Act is fatal for the respondent. It is by now well settled that for seeking protection of Section 25-G the requirement of having completed 240 days continuously in a calendar year preceding the termination is not a condition precedent. The said action is available to all retrenched workers whether they have completed 240 days or not. Consequently the protection of the respondent board in terminating the services of the petitioner has to be held to be wrong and illegal. It further transpires from the record that in pursuance to the award passed by this Court which came to be later affirmed by the Hon'ble High Court in CWP No.291/06, even some of workers who were retrenched along with the petitioner in year 1988 stands re-engaged. It is admitted by RW1 and is also apparent from mark 'B' placed on record.

13. Thus all the reasons discussed above I am constrained but to hold that the services of the petitioner were dispensed with illegally. He is liable to be re-engaged, and it is ordered accordingly. Seeing to the peculiar facts and circumstances discussed above and the long break in service i.e. from 1988 to 1999 the petitioner shall not be entitled to any back-wages. He shall however entitled to continuity in service, but that too after the year 1999. The aforesaid points are accordingly decided partly in favour of the petitioner.

ISSUE NO.3 :

14. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF :

15. For all the reasons discussed above, the reference is allowed. The respondent is directed to re-engage the petitioner forthwith. He is entitled to continuity in service, after the year 1999 though without backwages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 23rd day of July, 2010.

By order,
(*Kr. Chirag Bhanu Singh*)
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

REVENUE DEPARTMENT

NOTIFICATION

Shimla-2, the 14th February, 2011

No. Rev-C(F)10-1/2009.—In supersession of this Department Notification of even number dated 28.01.2011, the Governor, Himachal Pradesh is pleased to authorize the issue of Jamabandis i.e. copies of record of rights with proper certification along with unique number to the public, through the Lok Mitra Kendras which have been set up by the Service Centre Agencies with whom tripartite agreements has been signed by the Revenue and Information Technology Departments. Such copies of Jamabandis would be issued on A-4 size paper for which the concerned Lok Mitra Kendra will charge Rs. 5/- per page. Apart from this, the Lok Mitra Kendras will also receive, on behalf of the Government, the prescribed fees for issue of copies of Jamabandis, which at present is Re.1/- per Khatauni. The Government fee will be deposited by concerned Lok Mitra Kendras/Service Centre Agencies (SCA's) into the designated Treasury under head of account 0029-Land Revenue 800-Other Receipts 07-Copying Fee and Inspection Fee of Revenue Department.

The Governor, Himachal Pradesh is further pleased to order that the copies of the record of rights(Jamabandis) provided through the Lok Mitra Kendras shall be presumed to be true as per Section 45 of the Land Revenue Act, 1954 until the contrary is proved or a new entry is lawfully substituted.

By order,
Sd/-
Pr. Secretary (Revenue)
to the Government of Himachal Pradesh.

